

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 12,732

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Appeal of)

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INTRODUCTION

The petitioner appeals a decision by the Department of Social Welfare denying her application for Medicaid. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

FINDINGS OF FACT

1. The petitioner is a fifty-seven-year-old woman who has completed two years of college. She has a thirteen year history of work as a desk clerk in the hotel business. She is currently employed as a desk clerk in a residential facility for the elderly.

2. The petitioner has three serious medical problems. The first is malignant hypertension which causes dizziness and blurred vision. This problem has existed for about five years and can be fairly well controlled through medication when the petitioner can afford to buy it.

The second problem is blindness in her right eye due to central retinal vein occlusion, which came on suddenly in October of 1993. She had operations to deal with the pain but her sight could not be preserved. She has residual problems with depth perception and right-sided blindness.

The third problem is low back pain syndrome with sciatic radiculopathy. The petitioner's X-rays show that she has a herniated nucleus pulposus at the 4th and 5th lumbar vertebrae, which has caused her low back pain from time to time. On December 31, 1993, the petitioner experienced an acute exacerbation of the pain in her lower back with radiation through her right leg and accompanying numbness in the toes. That pain prevented her from working until February 13, 1994.

3. The petitioner's combination of impairments prevent her from performing fine motor activities (due to her lack of depth perception) and limit her ability to stand or walk for prolonged periods, and to do any lifting, carrying or repetitive bending.

4. In spite of these considerable restrictions, the petitioner continues to work at her former job part-time. She works now as a light duty aide at a facility for the elderly. She spends most of her time sitting at a desk and answering the telephone. She works 53 hours in every two week cycle for \$5.72 per hour. She typically works three eight hour days in each week and part of a fourth day, every other week. Her monthly salary averages about \$650.00. In her job, she must alternate sitting and walking and is not required to do any prolonged standing or lifting. She has stopped driving, due to her poor eyesight, and takes a taxi to work. She has been out of severe pain since February due to medication and rest. Her hours are only part-time because her employer cannot afford to offer her any more. She gets no health benefits with her job and has trouble affording expensive medications.

5. The petitioner lives with her one hundred and one year old mother whom she takes care of. She does all of their housework and grocery shopping although lifting the grocery bags tugs at her back.

ORDER

The decision of the Department is affirmed.

REASONS

Medicaid Manual Section M 211.2 defines disability as follows:

Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, which can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

Under the Social Security steps for evaluating disability, consideration must first be given to whether the petitioner is working:

(b) If you are working.

If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience.

20 C.F.R. § 416.920

A presumption is created under the regulations that a person who is earning more than \$500.00 per month from work activities is engaged in substantial, gainful activity. 20 C.F.R. § 416.974 (b)(2). The petitioner can rebut that presumption by providing evidence that shows that her work is really not substantial or gainful, for example, by showing that her work is done under special circumstances or against medical advice to the detriment of her health. The petitioner has made no such showing here. Therefore, the fact that she is working an average of twenty-four and a half hours per week in regular employment and earning more than \$500.00 per month must be taken as an indication that she is capable of substantial and gainful employment. Thus, she must be determined to be "not disabled" without

regard to her medical condition, age, education and work experience.

The petitioner clearly had a period of disability from December 31, 1993 through February 13, 1994, when the medical evidence shows that she was unable to work. However, under the Medicaid regulations, the disability "must have lasted or must be expected to last for a continuous period of at least 12 months" (or be expected to result in death) in order to meet eligibility requirements.

The petitioner, at this point, can show no more than six weeks of disability. Should her situation become severe again and force her to cease working for more than a few weeks or seriously restrict the number of hours she can work, she should reapply for benefits.

The petitioner should also be aware that she may be eligible for General Assistance to help pay for medications if she does not have enough income to both meet her necessary monthly expenses and pay for her prescription needs. If that is the case, she should apply for GA benefits at her district office.

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